After perusing the affidavits of both parties there is no doubt that there were some quarrelling and dissatisfaition between the appellant and Ng Chin Sui but in my opinion they were not as serious as the appellant had made them out to be.

In his judgment Hill J.A. had considered the various authorities referred to by Mr. Ramani, counsel for the appellant and I am of the opinion, after careful study of these cases, that the general principle underlying these authorities was that the parties had reached such a state of complete deadlock that it would be impossible to carry on the business any longer. In the present case there was no allegation of dishonesty, inefficiency, misconduct or failure to keep proper accounts. It is true there were some differences between the two directors but to my mind they were not such as would cause complete deadlock that it would be impossible to carry on the business any longer. This is a family concern and I feel that it would not be impossible for them to resolve their differences and carry on with the spirit of co-operation that had existed from 1952 to 1957. The company is in a flourishing condition and in all the circumstances of the case, it appears that it will not be in the interest of the several shareholders to have the business wound up. I therefore agree with Hill J.A. that the appeal should be dismissed with costs here and in the Court below.

Appeal dismissed.

Solicitors: *Eugene Lye & Hoh; R. R. Chelliah.*

NATIONAL UNION OF PLANTATION WORKERS & ORS. v. ABDUL HAMID

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) December 10, 1962]

[Kota Bharu — F.M. Civil Appeal No. 33 of 1962]

Trade Unions — Publication of libel by servant of trade union at "Sangamani Press", the property of the union — Writ issued against trade union, servant and press — Whether trade union liable for tort of servant — Trade Unions Ordinance, 1959, s.22.

Libel and Slander — Trade union — Publication of libel by servant of trade union in union newspaper — Whether union liable in tort.

Practice and Procedure — Application to strike off writ — O.25.

On February 3, 1961 the 3rd appellant as agent and servant of the 1st appellant published in a newspaper known as the "Sangamani" certain matters defamatory of the respondent. The newspaper was printed at "Sangamani Press" which was the property of the 1st appellant. On April 24, 1962, the respondent issued a writ for libel against the 1st appellant, the "Sangamani Press" *eo nomine* and Perumal who are the 2nd and 3rd appellants respectively. The appellants applied under O.25 to have the action struck out on the ground that it was incompetent. The learned judge dismissed the application; the appellants appealed.

Held: (1) under the provisions of the Trade Unions Ordinance, 1959, a trade union is liable to be sued for torts arising from ownership of property and not otherwise;

(2) the liability in the present case arose from the relationship of master and servant and not from the ownership of property and therefore, the 1st appellant is not liable to be sued;

(3) the 3rd appellant is answerable for his own torts.

Per curiam: Under the existing law, a trade union is not liable for any tortious act where its liability is founded on the principle of vicarious liability.

Cases referred to:—

(1) *National Union of Plantation Workers* v. *K. Annamalai* [1959] M.L.J. 9.

(2) *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* [1901] A.C. 426.

(3) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 112.

(4) *Citizens' Life Assurance Company* v. *Brown* [1904] A.C. 423, 426.

(5) *Barnard* v. *Sully* 47 T.L.R. 657.

(6) *Turbervil* v. *Stamp* (1697) Comb. 459.

(7) *Bussy Amalgamated Society of Railway Servants & Bell* (1908) 24 T.L.R. 437.

COURT OF APPEAL.

R. Ramani for the appellants.

H. L. Wrigglesworth for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appeal arises out of a libel action which is pending in the High Court at Kota Bharu.

For the purposes of the appeal the facts must be taken to be as claimed by the plaintiff, that is to say as follows:

On 3rd February, 1961, there was published in a newspaper known as the "Sangamani", which circulates throughout the Federation, certain matters which constituted a libel on the present respondent. This newspaper is the property of the National Union of Plantation Workers which is a registered trade union and is published on its behalf by a Mr. Perumal and is printed at what is known as the "Sangamani Press" which is the property of the union. There is no suggestion that the publication was in any way connected with a trade dispute.

The plaintiff, who is the respondent to the present appeal, issued a writ for libel on 24th April, 1962. He joined as defendants the union, the "Sangamani Press", *eo nomine,* and Mr. Perumal.

The defendants applied under Order 25 to have the action struck out on the ground that it was incompetent by reason of section 22 of the Trade Unions Ordinance, 1959. That application was dismissed by Mr. Justice Hashim and against that decision the defendants have now appealed.

Unfortunately His Lordship has been somewhat reticent as to the course of reasoning which led to his decision. He referred to the case of the *National Union of Plantation Workers*

v. *K. Annamalai*[1] where this Court held that by reason of section 21 of the Trade Unions Enactment, 1940, an action for libel against a trade union was incompetent. He then concluded:—

"In my humble opinion section 22(2) of the Trade Unions Ordinance, 1959 has altered section 21(2) of the Trade Unions Enactment, 1940 and therefore the ruling in the above-mentioned reported case no longer applies. I therefore dismiss the motion with costs. At the end of the case I suggested to both counsel there should be an appeal against my decision as the matter was and is of great importance to the trade union movement."

Though the question involved in the appeal relates to the interpretation of a local statute it is necessary that certain portions of the law in the United Kingdom relating to trade unions should be borne in mind.

Prior to the Trade Union Act, 1871, a trade union did not differ in any way from any other unincorporated voluntary association except that in so far as the contract between its members was in restraint of trade it was an unlawful association.

The 1871 Act provided for the voluntary registration of trade unions. It declared (section 2) that the purposes of a trade union should not be deemed to be unlawful by reason merely that they were in restraint of trade, and it went on (sections 6 *et seq.*) to confer upon registered unions certain capacities in relation to the holding of property through the medium of trustees. Section 9 provided that such trustees might bring or defend any action touching or concerning the property of a union.

In 1901 in the well-known case of *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants*[2] it was held by the House of Lords that a trade union registered under the 1871 Act could be sued in tort in its registered name. From this it followed that like any other employer it could in appropriate circumstances be held liable for the tortious acts of its servants, and that where a judgment in respect of such acts was obtained against a trade union it could be enforced against the funds of the union. The opinion was also expressed (per Lord Macnaghten at p. 438), though this was *obiter*, that a trade union whether registered or unregistered could also be sued in a representative action if the persons selected as defendants were persons who, from their position, might be fairly taken to represent the union.

The *Taff Vale* case gave rise to numerous protests from trade unions and when the Liberal Government came into power in 1905 one of its first acts was to enact the Trade Disputes Act, 1906, section 4 of which reads as follows:—

"(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871, section nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute."

The object of the Act and the events leading up to it were thus described by Viscount Haldane L.C. who had been leading counsel for the union in the *Taff Vale* case and who had been a member of the Government responsible for the Trade Disputes Act itself, in the case of *Vacher & Sons Ltd.* v. *London Society of Compositors*[3]:—

"That Act was passed five years after the decision of this House in the case of *Taff Vale Ry. Co.* v. *Amalgamated Society of Railway Servants*. It had been there decided that a trade union, registered under the Trade Union Acts, could be sued in its registered name, and also that a trade union, whether registered or not, could, since the Judicature Acts, be sued in a representative action at common law, if the persons selected as defendants were persons who from their position might fairly be taken to represent the union. It was pointed out by Lord Lindley that if a judgment so obtained was for the payment of damages it could be enforced only against the property of the union, and that to reach such property it might be necessary to make the trustees parties to any proceedings.

It is common knowledge that this decision gave rise to keen controversy as to whether the law required amendment. On the one hand it was contended that the principle laid down ought to remain undisturbed, because it simply imposed on the trade unions the legal liability for their actions which ought to accompany the immense powers which the Trade Union Acts had set them free to exercise. On the other side it was maintained that to impose such liability was to subject their funds, which were held for benevolent purposes as well as for those of industrial battles, to undue risk. It was said that by reason of the nature of their organization and their responsibility in law for the action of a multitude of individuals who would be held in law to be their agents, but over whom it was not possible for them to exercise adequate control, they were, by the decision of this House, exposed to perils which must cripple their usefulness."

In this country until 1940 trade unions, in common with other voluntary associations, were subject to the provisions of the Societies Enactment. In 1940, however, the Trade Unions Enactment of that year removed trade unions from the scope of the Societies Enactment and made them subject to a series of statutory provisions somewhat similar to but not exactly the same as those existing in the United Kingdom.

The general liability of trade unions to be sued was set out in section 24(1) which provided that a registered trade union might sue and be sued under its registered name and that execution for any money recovered from a trade union in civil proceedings might issue against any property belonging to or held in trust for the union other than the benevolent fund of a registered trade union. Apart from the saving in favour of benevolent funds, that section read by itself set out, substantially, what was the law in the United Kingdom, as declared in the *Taff Vale* case, prior to the 1906 Act. But section 21 (as amended in 1948) read as follows:—

"(1) A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in

respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any Court.

(2) Nothing in this section shall affect the liability of a trade union or any officer thereof to be sued in any court touching or concerning the property or rights of a trade union, except in respect of any tortious act committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute."

That section was considered by this Court in the case of the *National Union of Plantation Workers* v. *K. Annamalai, supra,* where it was decided that by reason of it a registered trade union could not be sued for libel. Smith J. and myself took the view that the word "property" in sub-section (2) meant specific property and by a course of reasoning based on the English authorities we arrived at the conclusion that the section as a whole was of substantially the same effect as section 4 of the Trade Disputes Act, 1906, and that it protected a registered trade union against liability to be sued for libel.

Shepherd J. in a dissenting judgment, expressed the view that "property" did not mean specific property but was to be construed as meaning all property, the sum total of property rights of any description, owned by a union and this led him to the conclusion that an action for libel was excluded from the generality of the exemption contained in sub-section (1) by the provisions of sub-section (2).

That case was decided in June, 1958, and just about a year later the Legislature enacted the Trade Unions Ordinance, 1959. That Ordinance, which was a codifying and amending statute, repealed the 1940 Enactment and replaced it by an Ordinance which followed the same general lines as its predecessor but made a large number of alterations on a variety of points wholly unrelated with each other. Section 24 of the 1940 Enactment enabling a registered trade union to sue and to be sued was replaced by section 25 which was in identical terms. Section 21 of the 1940 Enactment, however, was replaced by the following section:—

"22. (1) A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of a trade union *or any trustee* or officers thereof to be sued in any court touching or concerning the *specific* property or rights of a trade union *or in respect of any tortious act arising substantially out of the use of any specific property of a trade union,* except in respect of an act committed by or on behalf of the trade union in contemplation or furtherance of a trade dispute."

It will be observed that sub-section (1) is the same as the old sub-section (1) and the same as sub-section (1) of section 4 of the Trade Disputes Act, 1906. But in sub-section (2) there are three changes from section 21 of the 1940 Enactment. The words "or any trustee" have been inserted after the words "trade union" where these words first occur; the word "specific" has been inserted before the word "property" where it first occurs; and the words "or in respect of any tortious act arising substantially out of the use of any specific property of a trade union" have been inserted after the words "trade union" the second time these words occur.*

The first of these alterations has no bearing on the present case.

The second alteration is clearly to be connected with the difference of opinion between Shepherd J. and the other members of the Court in *Annamalai's* case.

That case, whether or not it was correctly decided on the law as it then stood, is certainly authority for the proposition that a libel action against a trade union is not one "touching or concerning the specific property or rights" of the union, and the insertion of the word "specific" before the word "property" in the new section give at least some support to the view that it was not the intention of the Legislature to alter the law.

The main question which remains to be considered, however, is whether this or any other libel action is an action where the liability of a trade union to be sued is "in respect of any tortious act arising substantially out of the use of any specific property of a trade union".

Section 22 must be considered in the first place as a whole and it is to be observed that considered as a whole it does not do anything to increase the liability of a trade union in respect of tortious acts beyond the liability which is imposed on other persons by the general law of the land. It does not make a trade union liable for anything for which another person would not in the same circumstances be liable, it does nothing to extend the liability of a trade union beyond the limits to which that liability would have been subject if the section had not been enacted. Nor, it should be added, is there anything elsewhere in the Ordinance that would have such an effect.

Coming now to sub-section (1), that sub-section by itself confers upon a trade union an absolute exemption from being sued in tort. In *Vacher's* case, *supra,* Kennedy L.J. said in the Court of Appeal with reference to the same provision in the 1906 Act (at p. 563):—

"Nothing, as it appears to me, could be clearer or more explicit than the language of the enactment itself ..... we cannot allow such an action to be entertained by the High Court of Justice ..... without contravening the express provisions of the Act of Parliament."

In the House of Lords, Lord Shaw of Dunfermline (at p. 126) described "the words themselves" as being unambiguous, comprehensive, and imperative".

Coming then to sub-section (2), that clearly derogates from the generality of the exemption contained in sub-section (1) by providing that

* For convenience these words have been italicised in the quotation of the section.

nothing contained in the section is to affect the liability of a trade union to be sued in respect of certain classes of torts which it describes unless committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute. The extent of that derogation, however, whatever interpretation be given the words of the sub-section, cannot be so extensive as to impose liability for all classes of torts known to the law for the effect of such an interpretation would be completely to evacuate the content of the exemption contained in sub-section (1) except in the case of tortious acts done in contemplation of a trade dispute, a result which was rejected by the House of Lords in *Vacher's* case.

It is to be observed that what the sub-section excludes from the general exemption from liability in respect of tortious acts contained in sub-section (1) is liability to be sued "in respect of any tortious act arising substantially out of the use of any specific property of a trade union". Now, if these words were to be construed literally and in isolation they might produce some very curious and indeed absurd results. They might lead to the result that if a servant of the Union in the course of the Union's business wrote defamatory matter on his own note paper with his own pen and ink and then published it the Union would not be liable whereas if in the same circumstances he wrote the same words on a sheet of the Union's note paper with a pen that belonged to the Union, or indeed with his own pen dipped in the Union's ink, then the Union would be liable. Or again if a subscription collector employed by the Union caused damage by negligent driving of a motor vehicle while on the Union's business the Union's liability might depend on whether the vehicle he was driving belonged to the Union or was his own property.

But the words are not to be read in isolation, they are to be read in the context of the Ordinance as a whole and in the light of the consideration already stated that we are dealing with existing classes of liability known to the law. So considered it is clear that the words "arising substantially out of the use of any specific property" do not qualify the words "tortious act" but qualify the word "liability". Thus the true dichotomy is between torts where the liability arises from ownership of property and for which the union is liable to be sued and torts which arise otherwise than from ownership of property and for which the union is not liable to be sued.

Libel clearly falls within the second of these classes. It is well-settled law that where a servant of a corporation publishes a libel in the course of his employment "the company are liable for it on ordinary principles of agency" (*Citizens' Life Assurance Company* v. *Brown* [4]; *per* Lord Lindley). In other words, the liability arises from the relationship of principal and agent or of master and servant and not from the ownership of the physical embodiment of the matter published or the physical means of its publication. In some cases such ownership may be of some evidential value in making out the relationship between the parties (see *Barnard* v. *Sully* [5]) but it is in no case one of the facts from which liability arises. As was said by Holt C.J. nearly 300 years ago in the case of *Turbervil* v. *Stamp* [6]:—

> "If my servant doth any thing prejudicial to another, it shall bind me, where it may be presumed that he acts by my authority, being about my business."

For these reasons I am compelled to the conclusion that under the existing law, as under the previous enactment, a trade union is not liable to be sued for a libel published by its servants or indeed for any other tortious act where its liability springs from the ordinary principle of vicarious liability. As Darling J. said of the 1906 Act in the case of *Bussy* v. *The Amalgamated Society of Railway Servants & Bell* [7]:—

> "From the humiliating position of being on a level with other lawful associations of His Majesty's subjects the statute ..... has relieved all registered trade unions, and they are now *super legem*, just as the medieval Emperor was *super grammaticam*."

In the present case it follows that so far as the National Union of Plantation Workers is concerned and so far as concerns the Sangamani Press which is non-existent in law and is just another name for the Union the appeal should be allowed.

As regards the third defendant, Mr. Perumal, I fail to see that he is entitled to exemption from liability by reason of anything in the Ordinance. What section 22 strikes at is an action against the union or a representative action in which members of it are sued as representative defendants. It does not forbid an action against an individual employee of a trade union so as to make him not answerable for his own torts. If authority is needed for that proposition it is to be found in the following observations of Lord Moulton relating to section 4 of the Trade Disputes Act, 1906, in the case of *Vacher & Sons Ltd.* v. *London Society of Compositors*, *supra*:—

> "It will be seen that it does not affect the personal liability of any individual. Trade unions, just like all other associations, must act through agents, and it is a fundamental principle of English law that no tortfeasor can excuse himself from the consequences of his acts by setting up that he was acting only as the agent of another. All that the section takes away is the power of proceeding against the association or making its corporate funds liable."

So far, therefore, as concerns Mr. Perumal I would dismiss the appeal.

As regards the costs the Union is entitled to its costs of this appeal and in the Court below. As, however, they have shared representation with the unsuccessful appellant there may be a case for some apportionment. I would desire to express no opinion on that point at this stage in case counsel wish to be heard.

Hill J.A.: I have had the benefit of reading the judgment of the learned Chief Justice. I agree with all that he has said and have nothing to add.

Barakbah J.A.: I have had the benefit of reading the judgment of the learned Chief Justice. I agree with his reasoning and conclusion and have nothing to add.

The Union's and 2nd appellant's appeal allowed.

Appeal of 3rd appellant dismissed.

Solicitors: *Braddell & Ramani; H. I. Wrigglesworth & Co.*

LIEW WAH MING v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) November 19, 1962 and January 8, 1963]

[Ipoh — F.M. Criminal Appeal No. 35 of 1962]

Criminal Evidence — Child's evidence — Corroboration — Misdirection — Evidence Ordinance, 1950, s.157.

Criminal Evidence — Statement made to police by prosecution witness in the course of police investigation — Taking cognizance of — Courts Ordinance, 1948, s.30 — Criminal Procedure Code (Cap. 6), s.113(ii).

The appellant was charged with the murder of a girl under section 302 of the Penal Code and convicted and sentenced to death. At the trial one of the witnesses was a child of about 7 to 8 years and the trial judge had dealt with his evidence in summing up to the jury. On appeal, it was argued *inter alia* that (1) the trial judge failed to warn the jury adequately as to the dangers of accepting the uncorroborated evidence of a child of tender years, (2) he misdirected them on the meaning of corroboration; alternatively he failed to give adequate guidance thereon and (3) he directed them that evidence which in fact did not constitute corroboration could be tendered as corroboration.

Held: the direction was not satisfactory with regard to the question of corroboration. Although a former statement made by a witness is admissible to corroborate his testimony and with the object of showing consistency, the evidence of the child even if it was believed by the jury was not clearly corroboration of his story by independent testimony tending to connect the accused with the crime and this should have been pointed out to the jury.

On a preliminary point as to whether two statements made by a prosecution witness to the police in the course of police investigation under section 30 of the Courts Ordinance should be taken cognizance of,

Held: in the exercise of the Court's discretion it is not expedient in the interests of justice that these statements should be made use of.

Cases referred to:—

(1) *Chao Chong & Ors.* v. *Public Prosecutor* [1960] M.L.J. 240.

(2) *Mohamed Sugal Esa* v. *The King* A.I.R. 1946 P.C. 3, 6.

(3) *Rex* v. *Velayuthan* [1935] M.L.J. 277.

(4) *Mohamed Ali* v. *Public Prosecutor* [1962] M.L.J. 230.

(5) *Mutukumaraswami Pillai and 7 Others* v. *King-Emperor* I.L.R. 1912 Mad. 397.

(6) *Bechu* v. *The King* A.I.R. 1949 Cal. 613.

(7) *Rex* v. *Baskerville* [1916] 2 K.B. 658, 667.

COURT OF APPEAL (CRIMINAL).

David Marshall for the appellant.

Mohamed bin Ya'acob (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment on November 19, 1962, on preliminary point): We have been asked to "take cognizance", in the words of counsel, under section 30 of the Courts Ordinance of two statements made to the police in the course of the police investigation by a woman, Toh Siew Lan, who was a prosecution witness in this case.

Our law is not the law of England nor is it, so far as we are aware, the same as the law of British Guiana. Our law regarding such statements is contained in section 113 of the Criminal Procedure Code. It is no business of ours to question the wisdom of statutory provisions enacted by the Legislature. We are bound to assume that such provisions are enacted to ensure the doing of justice and that justice will best be done if the Courts are obedient to the directions of the Legislature and do not go beyond the bounds imposed by it.

As far as we are aware the only way in which this, or any other Court, can take cognizance of statements by witnesses made to Police Officers in the course of Police investigations is under the provisions of section 113(ii) which reads as follows:—

> "When any witness is called for the prosecution or for the defence, other than the accused, the Court shall on the request of the accused or the prosecutor refer to any statement made by such witness to a police officer in the course of a police investigation under this Chapter and may then, if the Court thinks it expedient in the interest of justice, direct the accused to be furnished with a copy thereof, and such statement may be used to impeach the credit of such witness in the manner provided by the Evidence Enactment."

That is the law in this country. It springs originally from what was section 162 of the Indian Criminal Procedure Code which is no longer the law of India. As long ago as 1923 the words "if the Court thinks it expedient in the interests of justice" were deleted thereby giving the accused person an absolute right at the trial to make use of such statements and now the law has been drastically remodelled by the Indian Criminal Procedure Act of 1955 which law gives an accused person a right to claim such statement before the trial.